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APPLICATION N	0.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,434	10/766,434 01/26/2004		Donald E. Black	4012	3611
29356	7590	05/01/2006		EXAMINER	
JERRY S			CHAMBERS, MICHAEL S		
	GHAN ST. IT, OH 43	3420	ART UNIT	PAPER NUMBER	
·				3711	
			DATE MAIL ED: 05/01/2006		

Please find below and/or attached an Office communication concerning this application or proceeding.

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	Application No.	Applicant(s)					
Office Action Cummen	10/766,434	BLACK, DONALD E.					
Office Action Summary	Examiner	Art Unit					
	Mike Chambers	3711					
The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply							
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).							
Status							
1) Responsive to communication(s) filed on 14 Ma	arch 2006.						
	action is non-final.						
3) Since this application is in condition for allowan	ice except for formal matters, pro	secution as to the merits is					
closed in accordance with the practice under E	closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.						
Disposition of Claims							
4)⊠ Claim(s) <u>1,3,6-11,13 and 16-20</u> is/are pending in the application.							
4a) Of the above claim(s) is/are withdrawn from consideration.							
5) Claim(s) is/are allowed.							
6) Claim(s) <u>1,3,6-11,13 and 16-20</u> is/are rejected.							
7) Claim(s) is/are objected to.							
8) Claim(s) are subject to restriction and/or	8) Claim(s) are subject to restriction and/or election requirement.						
Application Papers							
9) The specification is objected to by the Examiner	•						
10) The drawing(s) filed on is/are: a) acce	epted or b) objected to by the E	examiner.					
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).							
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).							
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.							
Priority under 35 U.S.C. § 119							
 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) ☐ All b) ☐ Some * c) ☐ None of: 1. ☐ Certified copies of the priority documents have been received. 							
2. Certified copies of the priority documents have been received in Application No							
3. Copies of the certified copies of the priority documents have been received in this National Stage							
application from the International Bureau (PCT Rule 17.2(a)).							
* See the attached detailed Office action for a list of the certified copies not received.							
Attachment(s)							
1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413)							
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) 	Paper No(s)/Mail Da 5) Notice of Informal P	ite atent Application (PTO-152)					
Paper No(s)/Mail Date	6) Other:						

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DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1, line 16 recites the limitation "the tubular lighter" in line 1. It appears the term "member" is missing from the claim.

Claim 17 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim is dependent on itself. It will be assumed the claim depends from claim 11.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1,3,6-7,11,13, and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franssen (6918843) in view of Adorjan (829749). Franssen discloses the elements of claim 1, (abstract, fig 1,2) however it fails to disclose means for

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compressing the weights. Adorjan discloses a means for compressing variable weights in a tubular shaft (fig 2). It would have been obvious to one of ordinary skill in the art at the time of the invention to have employed the means for compressing weights in a tubular shaft of Adorjan with the apparatus of Franssen in order to prevent multiple weights from making a noise and distracting the batter.

As to claim 3: Franssen discloses a bore of consistent diameter (fig 2).

As to claim 6: Franssen discloses a flanged and extended portion (fig 2).

As to claim 7: Franssen discloses a threaded portion (fig 2).

As to claim 11: Franssen discloses an outer cap (fig 2).

As to claim 13: Franssen discloses a bore of consistent diameter (fig 2).

As to claim 16: Franssen discloses a flanged and extended portion (fig 2).

As to claim 17: Franssen discloses a threaded portion (fig 2).

Claims 9,10,19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franssen (6918843) in view of Ador (829749) as applied above and further in view of Official Notice. Official Notice is taken that the use of plastic and aluminum is well known in the art. It would have been obvious to one of ordinary skill in the art at the time of the invention to select any one of several equivalent materials including aluminum and plastic based on cost and design considerations.

Also,

Claims 1,3,6-7,11,13, and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Owen (3116926) in view of Franssen (6918843). Owen discloses the

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elements of claim 1, however it fails to disclose an outer diameter less than the diameter of a conventional bat (fig 2, 2:51-54). Franssen discloses an outer diameter less than the diameter of a conventional bat (fig 2). It would have been obvious to one of ordinary skill in the art at the time of the invention to have employed the bat diameter of Franssen with the apparatus of Owen in order to permit the training bat to be used by a greater population due to size and weight considerations.

As to claim 3: Franssen discloses a bore of consistent diameter (fig 2).

As to claim 6: Franssen discloses a flanged and extended portion (fig 2).

As to claim 7: Franssen discloses a threaded portion (fig 2).

As to claim 11: Franssen discloses an outer cap (fig 2).

As to claim 13: Franssen discloses a bore of consistent diameter (fig 2).

As to claim 16: Franssen discloses a flanged and extended portion (fig 2).

As to claim 17: Franssen discloses a threaded portion (fig 2).

As to claim 18: Owen discloses a compression spring (fig 2). The position of the spring is not critical to the apparatus. The spring could be interchanged with the weights without affecting the operation of the device.

Claims 9,10,19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Owen (3116926) in view of Franssen (6918843) as applied above and further in view of Official Notice. Official Notice is taken that the use of plastic and aluminum is well known in the art. It would have been obvious to one of ordinary skill in

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the art at the time of the invention to select any one of several equivalent materials

including aluminum and plastic based on cost and design considerations.

Response to Arguments

Applicant's arguments with respect to claims 1-20 have been considered but are

moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Mike Chambers whose telephone number is 571-272-

4407. The examiner can normally be reached on Mon-Fri 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Gene Kim can be reached on 571-272-4463. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

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For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

829749*3116926*6918843*514420*5634856*357

8801*0558320

Michael Chambers Examiner

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April 27, 2006

EUGENE KIM SUPERVISORY PATENT EXAMINER

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